COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RE: PETITION OF BAY STATE GAS COMPANY
TO INCUR LONG-TERM DEBT OF UP TO $50,000,000 DTE 02-73

APPEAL BY LOCAL 273 OF HEARING OFFICER'S RULING TO LIMIT INTERVENTION

Local 273, Utility Workers Union of America, AFL-CIO ("Local 273") hereby appeals to the full Commission for a review of the Hearing Officer's December 11, 2002 "Ruling on Local 273's Petition to Intervene" ("Ruling"). This appeal is taken pursuant to 220 CMR 1.06(6)(d)(3). In accordance with that regulation, Local 273 informed the Hearing Officer at the December 12, 2002 hearing of its intent to appeal. The Hearing Officer allowed Local 273 until December 20, 2002 to file its written appeal, and allowed until December 24 for replies. Tr. 8.[1] As detailed more fully below, Local 273 argues:

(1) Local 273 adequately identified how it will be substantially and specifically affected by this proceeding. Further, the record developed at the December 12 hearing demonstrates that Local 273's allegations in its Petition to Intervene are well-founded. Even relatively small variations in the interest rate ultimately set on the bonds Bay State seeks to issue result in millions of dollars in increased costs to Bay State. Higher interest costs affect Local 273's

[1] "Tr. X" refers to pages of the transcript of the December 12, 2002 hearing.

members both as employees (in terms of less money being available for wages, benefits, and safe working conditions) and as ratepayers (in terms of higher rates). Weighing the many factors the Department has considered in prior rulings on interventions, Local 273 has made the showing required to be granted intervenor status.

(2) The Hearing Officer's ruling is inconsistent with a long line of Department decisions allowing Local 273 and other utility union locals to intervene in cases such as this one. In fact, the Department allowed Local 273 to intervene fully in a previous $50 million financing case involving Bay State Gas Company ("Bay State" or "Company"). The decision being appealed is contrary to all prior precedents and should be reversed.

(3) While hearings in the case have now concluded, the Department should still issue a ruling on Local 273's appeal. This is a classic example of a case that is "capable of repetition yet evading review." The Department should either reverse or vacate the Hearing Officer's Ruling.

I. SUMMARY OF RELEVANT PROCEEDINGS

On December 5, 2002, Local 273 timely[2] filed a petition to intervene in this case. In addition to meeting the other requirements of 220 CMR 1.03, Local 273 stated how it would be substantially and specifically affected by a decision in this case:

> The members of Local 273 are substantially and specifically affected by Bay State's financial health and financing arrangements, including the financing proposed in this case. Local 273 attributes much of the decline in its membership, and a comparable decline in non-union staffing levels, to the financial challenges Nisource, Inc., Bay State's parent company, faces as a result of various mergers and financing arrangements.

[2] The Department's "Notice of Filing and Public Hearing" dated November 21, 2002 set December 10, 2002 as the deadline for filing petitions to intervene.

Petition to Intervene ("Petition"), ¶1. Local 273 also noted that the Department had granted it intervenor status in three prior Bay State proceedings, DPU 97-24, DPU/DTE 97-97, and DTE 98-31.[3] Petition, ¶2. Local 273 thus established that it had been previously allowed to intervene in a broad range of Department proceedings involving the Company.

Local 273 also noted in its Petition that the Company's proposal to issue 20-year bonds with an interest rate of 7.75% did not appear to include favorable terms nor be "in the best interests of Bay State's ratepayers." Petition, ¶4. Notably, the Company's own witness has now proposed that the Company instead issue 10-year bonds at no more than 6.75% interest, Tr. 18-19, which would lower interest costs over the life of the bonds by $5 million.[4] Thus, the record in the case now fully supports Local 273's assertion that its members will be substantially and specifically affected by this proceeding, both as employees and ratepayers. No party can argue that the Company paying an additional $5 million in interest payments does not substantially and significantly affect Bay State's financial strength and, therefore, Local 273's members, as employees and ratepayers of the Company.

On December 9, Bay State filed an opposition to Local 273's Petition.

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[3] The first of these cases, DPU 97-24, was also a financing case that involved a request by Bay State "to invest up to $50 million" in other companies. Like the present Petition, and like so many petitions to intervene filed before this Department, Local 273's petition in DPU 97-24 contained only a brief statement of how it was substantially and specifically affected:

> "The members of Local 273 are directly and immediately impacted by the Company's proposed petition to the extent that revenues from the regulated business will be diverted to other, unregulated entities."

(Copy of petition in 97-24 attached). The other two cases, DPUDTE 97-97 and DTE 98-31 were, respectively, a rate case and a merger proceeding.

[4] Company witness Rea testified that reducing the interest rate by .1% would reduce the interest cost by $50,000 per year, Tr. 76-77. Therefore, reducing the interest rate by 1% would save $500,000 per year, or $5 million over the life of a ten-year bond.

On December 10, Local 273 replied to Bay State's opposition ("Reply"). In addition to the Bay State cases cited in its Petition, Local 273's Reply noted a number of other cases in which the Department had allowed other utility unions to intervene in a broad range of merger, restructuring, financing and rate cases, and the fact that there appeared to be no precedent in which a local union was not allowed to fully intervene. Reply, ¶1. Local 273 again pointed out how the proposed terms of the Company's $50 million bond issue could:

> weaken Bay State's financial health, directly affecting day-to-day operations, service quality, staffing levels, and the environment in which Local 273 members perform their jobs.

Reply, ¶2. Local 273 further pointed out that Supreme Judicial Court precedent ratified the Department's long-standing practice of favoring interventions from unions, who represent large numbers of employees and ratepayers while, in some cases, limiting the interventions of individual ratepayers.

On December 11, 2002, the Hearing Officer issued the one-page memo Ruling. After summarizing the procedural posture and arguments offered in support of Local 273's Petition, as well as case law governing petitions to intervene, the Hearing Officer provided the following reasoning for limiting Local 273's intervention:

> After due consideration, I find these reasons do not support Local 273's claim that it is substantially and specifically affected in this $50 million refinancing by a company whose assets are approximately $1 billion.

The Ruling provided no further discussion of reasons nor citation to any cases. The Ruling did allow Local 273 to submit briefs and to have responses to its information requests moved into the record, through the Bench. In practical terms, the Ruling precluded Local 273 from cross-examining witnesses and would limit, if not preclude, Local 273's right to appeal any decision in

this case.

II. LOCAL 273 IS SUBSTANTIALLY AND SPECIFICALLY AFFECTED

The Department's standards for reviewing petitions to intervene are well-established:

> The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. [Citations omitted]. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. [Citations omitted]. . . .
> In addition, when ruling on a petition to intervene or participate, a Hearing Officer may consider, among other factors, the interests of the petitioner, whether the petitioner's interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner's intervention on the proceeding, and the nature of the petitioner's evidence, including whether such evidence will help to elucidate the issues of the proceeding . . . [citations omitted]. . . . The Department exercises the discretion afforded it under G.L. c. 30A, § 10 so that it may conduct a proceeding with the goal of issuing a reasoned, fair, impartial and timely decision that achieves its statutory mandate.

Eastern Edison Company, DPU 96-24 (Interlocutory Order on Appeal, July 9, 1997), 4-5.

Before addressing the several factors just listed, Local 273 notes that one important purpose of allowing parties to intervene fully is to allow for the full development of the record, so that the Department may issue a "reasoned, fair and impartial" decision. *Boston Edison Company*, DPU 96-24, *supra*. Local 273 suggests that the Department should be particularly interested in exercising its discretion to allow, rather than limit, interventions, where there are few other intervenors and where the company's petition or request involves substantial sums of money and potentially significant ratepayer impacts. Hearings before the Department bear little resemblance to court litigation between private parties, in which third parties are also allowed to intervene but under relatively strict standards. *See, e.g.,* Mass. R. Civ. P. 24 (rules for intervention by right and permissive intervention).

Almost all proceedings before the Department affect a very wide range of persons and businesses, and the Department broadly and routinely disseminates notice of those proceedings. Unduly limiting interventions runs counter to the very purposes of G.L. c. 30A, § 10 and 220 CMR 1.03. Local 273 is not suggesting that the Department open the proverbial floodgates and allow in parties who are not "substantially and specifically affected." However, in close cases the Department should welcome interventions from parties who make a legitimate claim to being specifically affected and whose prior interventions reflect a willingness and ability to offer relevant and useful information, as well as to comply with all schedules and procedural rules.

Turning to the specific factors the Department itself has articulated for Hearing Officers to consider, Local 273 alleges that the issues raised in this case could have a substantial impact on the Company's financial health and, thus, on the Company's day-to-day operations, service quality and employee working conditions.[5] Reply, ¶2. The record now demonstrates that reasonable alternatives to the Company's initial proposal of issuing a 20-year bond at up to 7.75% interest (e.g., the Company's revised request, for permission to float a ten-year bond at up to 6.75% interest per annum) can result in lower interest expenses of $5 million. See Tr. 76-77 and note 4, *supra*. There is no doubt that there are substantial financial issues raised by the Company's petition. Local 273 further and specifically alleges that there is a direct correlation between the Company's financial health and staffing levels. Petition, ¶ 1. The Department is well aware that Bay State has cut its staff substantially, and there is no doubt that Local 273 is the

[5] Local 273 notes that petitioners often cannot provide a great level of detail about how a specific filing affects the petitioner's interests, in advance of discovery and cross-examination that elucidates those impacts. However, Local 273's petition here is no less detailed than in other cases in which it has been granted full intervention, nor less detailed than the vast majority of petitions to intervene filed with the Department.

most directly affected party, even though ratepayers may suffer service declines as well.

Local 273's interests are unique and cannot be represented by other parties. The Attorney General, the only other intervenor, never has purported to represent the interest of unions and has no statutory authority to do so. G.L. c. 12,§ 11E. Not even Bay State argued that the Attorney General can represent the interests of Local 273's members as employees of Bay State.[6]

The "scope of the proceeding," the "potential effect of the petitioner's intervention on the proceeding,"and "the nature of the petitioner's evidence," DPU 96-24, *supra*, also argue for allowing Local 273 to intervene fully. The scope of the proceeding involves Bay State's proposal to issue $50 million of bonds for twenty years at up to 7.75%. Exh. BSG-1, Petition of Bay State Gas Company. In connection with that request, Bay State also seeks waiver of the provisions of G.L. c. 164, § 15 so that it need not publicly advertise and seek bids for the bond issuance. *Id.* Local 273's petition confines itself to these issues. The nature of Local 273's evidence is now known to all parties, as the responses to its discovery requests have been admitted into evidence and formed the basis for many of the cross-examination questions of the Attorney General.[7] *See, e.g.*, Tr. 82-84, 96-98. Local 273's evidence is highly relevant to the proceeding, exploring such issues as the interest cost of the current proposed financing and how those costs compare to other

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[6] Bay State did argue that the Attorney General could represent the interests of Local 273's members, to the extent that they are Bay State ratepayers. However, many Local 273 members are not Bay State ratepayers. Local 273 also disagrees that the mere presence of the Attorney General forms a basis to exclude organizational intervenors who represent large groups of ratepayers. While there is precedent for limiting the intervention of individual ratepayers when the Attorney General has appeared, there is no precedent for limiting the intervention of unions or other groups representing ratepayers on an aggregate basis.

[7] The Hearing Officer precluded Local 273 from asking cross-examination questions, but the Attorney General considered many of Local 273's information requests relevant to its own lines of questioning.

options that may be available. Local 273 is a well-known to the Department as an intervenor, and no party can argue that the union's full participation, including cross-examination, would have in any manner delayed or interfered with an orderly proceeding.

In ruling to limit Local 273's intervention, the Hearing Officer found that Local 273 "is not substantially and specifically affected in this $50 million refinancing by a company whose assets are approximately $1 billion." In the absence of further explanation, this statement implies that the Hearing Officer found the nature of Bay State's petition to be so routine (in the sense that it is a "refinancing") or of such insignificant financial magnitude (in that it is $50 million in size) that Local 273 could not demonstrate a substantial and specific interest. However, the Department has once before allowed Local 273 to intervene in a Bay State proceeding that involved a proposed $50 million financial investment in other companies, DPU 97-24, and allowed other unions to intervene in a similar Boston Edison financing case, DPU 97-95, *supra*. Local 273 suggests that issuing a bond with the contractual obligation to pay interest, whether at 6.75% or 7.75%, imposes greater financial burdens on Bay State and poses graver financial risks for ratepayers than a utility investing available funds elsewhere. The evidence in this case shows that Bay State will pay no less than $38 million in interest over the first ten years of any bond that issues, and that relatively small changes in the bond terms can cost ratepayers millions of dollars. Tr. 76-77. Further, the proposed refinancing is not routine in that it involves a less-than-arms-length inter-company transaction and requires an explicit waiver from the Department under G.L. c. 164, § 15 due to the fact that Bay State is not seeking public bids.[8]

[8] The present circumstances are also somewhat atypical in that Bay State operates under a five-year rate freeze set in DTE 98-31. Higher interest costs cannot soon be recovered from ratepayers and, thus, are more likely to lead to cuts in staffing, operations, or service quality.

Local 273 has shown that is substantially and specifically affected by this proceeding.

III. THE DECEMBER 11 RULING IS CONTRARY TO ALL RELEVANT PRECEDENTS AND SHOULD BE REVERSED

As the Ruling itself notes, "the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings," a point affirmed by many appellate cases. In this case, however, the Ruling contravenes at least a dozen relevant precedents. Local 273 knows of no precedent for excluding a union from intervening in a proceeding filed by the utility that employs the union's members. In addition, there is an unbroken line of precedents allowing unions to intervene without limitations in cases such as the present one.

As noted above and cited in Local 273's Petition, the Department has allowed Local 273 to intervene fully in three prior Bay State proceedings, DPU 97-24 (a $50 million financing case), DPU/DTE 97-97 (a rate case), and DTE 98-31 (the case involving the acquisition of Bay State by Nisource, Inc.). Local 273 participated fully in all of these proceedings.

There are several other cases in which the Department has allowed a utility company's local union (or unions) to intervene in cases before the Department, based on petitions framed comparably to the Petition here. In those other cases, the petitioning union alleged that changes to the rates, financing or corporate structure of the company would substantially and specifically affect members of the named union, both in their capacity as employees of the utility and as ratepayers of the company. Notably, in many of these cases other parties were granted limited status or completely denied any intervention status because their interests were considered more

tangential to the case or because the petitioner was a single ratepayer. For example, in *Boston Edison Company*, DPU 97-95 (Dec. 28, 2001), at 5-6 UWUA Local 387 was "granted intervenor status" while other parties were granted limited status and five parties were denied any role. DPU 97-95 was a financing case in which the company proposed to invest $45 million in a non-utility subsidiary and thus involved similar issues about the effect of utility financings on union members.[9]

In *Boston Edison Company*, DPU 96-23 (Sept. 8, 1997), a restructuring case, the Massachusetts Alliance of Utility Unions along with UWUA Locals 369 and 387 were granted leave to intervene. However, Cablevision Systems Corporation was granted limited status due to its interests being commercial and not directly related to the issues before the Department.

In a merger proceeding, *Boston Edison Company*, DPU 97-63 (Sept. 2, 1997), at 17-18, the Department specifically noted that the:

> Union has established that it may be substantially and specifically affected by this proceeding. Accordingly, the petition for leave to intervene of the Union is hereby granted.

See, also, Eastern Enterprises, DTE 98-27 (1998)(merger proceeding; Department granted full intervention to United Steelworkers, Local 12086); *Massachusetts Electric Company*, DTE 96-25 (restructuring case; Massachusetts Alliance of Utility Unions allowed to intervene).

Notably, in *Eastern Edison Company*, DPU 96-24 (Interlocutory Order on Appeal, July 9,

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[9] Without in any way questioning the correctness of the Department's decisions to allow utility unions to intervene in DPU 97-95 and DPU 97-24 (the Bay State proposal to invest $50 million in other companies), Local 273 believes that the present bond case involves even more substantial and specific affects on the union. The $50 million bond issuance proposed here contractually requires Bay State to pay no less than $3.8 million in interest per year. Tr. 77. The investments proposed in DPU 97-95 and DPU 97-24 involve much less direct and calculable financial impacts.

1997), the Commission affirmed, upon appeal, a Hearing Officer's ruling to limit the intervention of Herbert Levesque, a single ratepayer of the company, although the Department previously had approved the petition to intervene of the Massachusetts Alliance of Utility Unions. This is not the only instance in which the Department has limited the intervention of single ratepayers while allowing local unions representing groups of employees and ratepayers to intervene, and the courts have favorably noted this distinction. *See, e.g., Robinson v. DPU,* 416 Mass. 688, 671 n. 4 (1993)(affirming Department's decision to grant Robinson, a single ratepayer, limited status, but noting that Department "allowed two union officials representing NET employees" to intervene fully, based on their representative capacity).

One other relevant decision is *Boston Edison Company et al.*, DPU 99-19 (Interlocutory Order, Apr. 8, 1999). In that proceeding, the Department allowed Steelworkers Local 12004 to intervene fully. It also allowed The Energy Consortium ("TEC"), represented by Bruce Paul, a non-lawyer, to intervene fully, and allowed the Massachusetts Institute of Technology ("MIT") to conduct cross-examination, even though granted limited intervention status. The allowance of TEC's intervention is contrary to Department policy and Supreme Judicial Court precedent that requires non-persons (e.g., corporate or organizational parties) to be represented by legal counsel. *See, e.g., Western Massachusetts Electric Company*, DTE 01-36 & 02-20 (Hearing Officer Ruling Nov. 18, 2002)(corporate petition to intervene denied on basis as being filed "without representation by an attorney," citing *Varney Enterprises, Inc. v. WMF, Inc.*, 402 Mass. 79 (1988); *see also Boston Edison Company v. DPU*, 375 Mass. 1, 45 (1978)("the Department's regulations prohibit nonlawyers from representing the interests of others"). However, the grant of TEC's petition to intervene reflects the Department's practice of liberally construing its

intervention rules.

Local 273 has thoroughly reviewed these intervention precedents because they amply demonstrate the breadth of cases in which unions have been allowed to intervene. Notably, Local 273 was not able to find any recent instance in which the Department completely denied a union intervention status or limited the scope of the union's role.

Parties before the Department, such as Local 273, are entitled to "reasoned consistency," a doctrine originally articulated in *Boston Gas Company v. DPU*, 367 Mass. 92, 104-105 (1975):

> A party to a proceeding before a regulatory agency such as the Department has a right to expect and obtain reasoned consistency in the agency's decisions. This does not mean that every decision of the Department becomes irreversible in the manner of judicial decisions constituting res judicata, but neither does it mean that the *same issue arising as to the same party is subject to decision according to the whim or caprice of the [DPU] every time it is presented.*

(Emphasis added).

Local 273 is entitled to "reasoned consistency" here. It has previously been allowed to intervene in three Bay State proceedings, including one that involved a proposed $50 million investment financing. Local 273 further had reason to expect its Petition to be granted, based on at least half a dozen additional decisions in which unions filed similar petitions to intervene that were granted. The Ruling in this case, which offers no reasoning as to why this case so fundamentally differs from all relevant precedents, thus appears not only to violate the "reasoned consistency rule" but also to be "arbitrary and capricious" within the meaning of G.L. c. 30A, § 14(7).

The Ruling implies that Local 273 (and, arguably, other potential intervenors) cannot show that it is "substantially and specifically affected" because "this [is a] $50 million

refinancing by a company whose assets are approximately $1 billion." This language implies that the Department considers this refinancing to be so routine, or of such *de minimus* impact, that few, if any, parties would be "substantially and specifically affected" by it. Local 273 addressed this issue in the prior regarding how it is in fact substantially and specifically affected by this proceeding.

The case of *Robinson v. DPU*, 835 F.2d 19 (1st Cir. 1987), cited by Bay State in its opposition to Local 273's Petition, does not control the present factual circumstances. Stanley U. Robinson, III is an individual ratepayer who intervened in an extraordinary number of the Department's cases, starting in the early 1970's. *See, e.g., Boston Edison Company v. DPU*, 375 Mass. 1 (1975); *Attorney General v. DPU*, 390 Mass. 208 (1983); *Robinson v. DPU*, 835 F.2d 19 (1st Cir. 1987); *Robinson v. DPU*, 412 Mass. 458 (1992); *Robinson v. DPU*, 416 Mass. 668 (1993). The Department ultimately concluded that Robinson, a *pro se* party, engaged in dilatory tactics that impeded an efficient hearing process. After several interventions by him, the Department limited, but did not preclude, his participation. As the Supreme Judicial Court noted in one of the earliest cases in which Robinson was allowed to fully intervene:

> . . . of 4,700 or so pages of transcripts [in the DPU proceeding]. . . over 900 pages were taken up by Robinson's cross-examination of witnesses.

Boston Edison Company v. DPU, 375 Mass. 1, 45, c*ert. denied*, 439 U.S. 921 (1975). The Court strongly urged the Department to consider whether to allow Mr. Robinson such license in the future. *Id.*, 375 Mass. at 46 ("We add that similarly extensive participation by an intervener in any future case should be permitted by the Department only if careful consideration discloses special circumstances in justification.")

In later cases, the Department allowed Robinson only limited participation to ensure that his interventions did not slow down the hearings. In *Robinson v. DPU*, 416 Mass. 668 (1993), a telephone case, the Supreme Judicial Court upheld the Department's right to limit his participation, in part because he was only one ratepayer representing no one other than himself. The SJC sharply contrasted Robinson's status with labor representatives:

> Two union officials representing NET employees were accorded full party status. The DPU justified its decision to allow these two individuals full party status in DPU 89-300 on the basis of their representative capacity.

416 Mass. at 671, n. 4.

Department precedent strongly favors allowing labor organizations to intervene in its proceedings, and this state's highest appellate court has noted with favor the Department's practice of preferring parties who are intervening in their "representative capacity" over individual ratepayers.[10] The Robinson case cited by Bay State stands for only the limited proposition that according Robinson "limited participation status" was "fair and reasonable under the circumstances." *Robinson v. DPU*, 835 F.2d 19, 22 (1st Cir. 1987). There is no comparison between the dilatory role that Robinson has played as a *pro se* intervenor and the role that Local 273 has played on behalf of its many members in numerous proceedings.[11]

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[10] Thus, Local 273 will not respond to Bay State's argument in its opposition to Local 273's intervention "that Local 273 has failed to identify any specific named employees who are asserting a request to intervene."

[11] Similarly, Bay State's reliance in its opposition on *Cablevision Systems Corporation v. Department of Public Utilities*, 428 Mass. 436 (1998) is inapposite as it involved granting limited intervention status to a *competitor* of Boston Edison Company. The Court found that "the public interest did not require it [the Department] to consider the consequences of competition between Cablevision and [an] unregulated affiliate"of Boston Edison Company. *Id.*, 428 Mass. at 438.

IV. WHILE HEARINGS HAVE CONCLUDED, THE DEPARTMENT SHOULD STILL REVERSE OR VACATE THE HEARING OFFICER'S RULING

Due to the speed at which the present hearing has been conducted, hearings concluded on the first day that Local 273 could have appealed the Hearing Officer's Ruling. The Department first issued an Order of Notice on November 21, 2002. Local 273 filed its Petition to Intervene on December 5, 2002, five days before the deadline the Department established. It also filed all of its discovery requests along with its Petition, an unusual step for an intervenor but one that Local 273 took to facilitate an expeditious hearing and avoid even the suggestion that its participation would delay the proceedings. Bay State filed its opposition to Local 273's Petition on December 9, and Local 273 filed its Reply the next day. The Hearing Officer ruled on December 11, and, thus, Local 273 could not note its intent to appeal any earlier than December 12.

While it may be suggested that Local 273's appeal is moot, given that hearings have concluded, the Department should still rule on this appeal. Local 273 is most concerned that the Hearing Officer's Ruling could be cited in the future as the basis for limiting Local 273's right to intervene (or the right to intervene of the national Utility Workers Union of America, of which Local 273 is one of many Massachusetts affiliates). This is a classic case that is "capable of repetition, yet evading review." *Cohen v. Bolduc*, 435 Mass. 608, 612 (2002). Given the nature of these financing proceedings, they are often heard and decided on an expedited basis, before rulings on standing issues can be reviewed. Local 273 intends to intervene in future proceedings that affect its members' interests, and the same set of circumstances could easily be repeated. The present ruling may have a direct and deleterious impact on Local 273's ability to intervene in

any future case. Yet, unless the Department rules on the appeal, the Hearing Officer's Ruling evades review.[12]

Based on all of its arguments above, and in light of the fact that the present case is "capable of repetition, yet evading review," Local 273 asks the Commission to reverse the Hearing Officer's Ruling.[13] Alternatively, if the Commission agrees with Local 273's legal arguments that it should have been granted full intervention status, it may vacate the Ruling as moot.

V. CONCLUSION

For the reasons presented above, Local 273 asks the Commission to reverse or vacate the Hearing Officer's December 11 Ruling.

Respectfully Submitted,

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[12] Additionally, this appeal is not moot because a grant of limited intervention status might severely limit if not eliminate Local 273's right to appeal any final decision to the courts. *See Save the Bay, Inc. v. DPU*, 366 Mass. 667, 673 (1975).

[13] Local 273 is not seeking any other relief, such as the right to recall the Company's witness and conduct additional cross-examination, or to present its own witnesses.

DATED: December 20, 2002 charak@nclc.org

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